IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20..4..2006

C O R A M

The Honourable Mr. A.P. SHAH, THE CHIEF JUSTICE
and
The Honourable Mrs. Justice PRABHA SRIDEVAN

Writ Appeal No.323 of 2006

The Commissioner of Central Excise,
Office of Commissioner of Pondicherry,
Goubert Avenue, Beach Road,
Pondicherry Commissionerate,
Pondicherry-605 001. .. Appellant

Versus

1. M/s. Sun Pharmaceuticals Industries Ltd.,
Plot No.25, Phase IV, GIDC,
Industries Estate, Panoli, Gujarat-394 116.
2. Sidharti Baid
3. Sadhur Wallia
4. Nathwani
5. M/s. Pradeep Drug Company Limited,
Sathammai Village, Karunkuzhi Post,
Madurandagam Taluk,
Kanchipuram District-603 303,
Tamil Nadu.
6. S. Ayyakkannu
7. K.G. Sampath Kumar
8. C. Bawarlal Jain
9. Ajay Modi
10. Jignesh V. Metha
11. J.B. Kumar
12. K.P. Bhaskaran
13. T. Thirunavukkarasu

14. Customs & Central Excise,
Settlement Commission,
Additional Bench, Narmadha Block,
Custom House, 33, Rajaji Salai,
Chennai-1.

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15. The Settlement Commissioner,
Customs & Central Excise,
Utpad Shulk Bhavan,
6th Floor, Bandra-Kurla Complex,
Bandra (East), Mumbai-400 051.

16. The Chairman,
The Settlement Commission,
Customs & Central Excise,
Principal Bench, New Delhi. .. Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order of a learned single Judge of this Court dated 17.1.2006 in W.P. No.2464 of 2005 Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the entire records pertaining to the impugned order No.44/04-Cus dated 29.9.04 passed by the Honourable Settlement Commission Customs and Central Excise, Mumbai and quash the same.

For Appellant : Mr. K. Veeraraghavan, S.C.G.S.C.
For Respondents : Mr. A. Ramesh Kumar

J U D G M E N T

Prabha Sridevan, J.

The writ petitioner is the appellant. He is aggrieved by the order of the learned single Judge dismissing the writ petition on the preliminary ground of territorial jurisdiction. The fifth respondent-Company, which has since merged with the first respondent-Company, was issued with a show case notice under the provisions of Sections 28(1), 114-A and 28-AB the Customs Act, 1962 for violation of the statutory provisions in Sections 58, 59, 68, 71 and 72 of the Customs Act to show cause as to why a penalty of Rs.1,71,91,550 should not be demanded and also the mandatory penalty along with interest. The show cause notices were received by the first and fifth respondents. The Revenue Authorities discovered, while checking the "Input Output Ratio", that there was a systematic, meticulous and willful evasion of duty by the fifth respondent in collusion with the first respondent. According to the appellant, the fifth respondent had inflated the quantity of raw materials required for production of the finished products such as Erythromycin, Raxythromycin and Erythromycin Azithromycin, so that after utilizing the actual quantity of raw materials and final products, the remaining quantity was utilized in the account of the first respondent under the pretext of job work placed by the first respondent. It is alleged that having taken advantage of the so called job work system, the fifth respondent had started clearing the in-bound materials, namely the raw materials, without payment of customs duty for

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the manufacture of the finished products. It is also alleged that the fifth respondent had fraudulently fabricated bogus records with relation to the mother liquor, "the mixture of spent solvents". According to the appellant, the key persons of the fifth respondent-Company have admitted the evasion of duty and the part played by them. It is in these circumstances that the show cause notice was issued to respondents 1 to 13.

2. Instead of replying to the show cause notice, the first respondent filed Writ Petition No.6157 of 2003 on the ground that the second respondent in that writ petition had no jurisdiction to issue the show cause notice. This writ petition was disposed of by a learned single Judge of this Court on 24.9.2003 by directing the authorities therein to furnish the copies of the documents required by the respondents herein within a period of 15 days and with a further direction to the respondents to file its objections thereafter to the show cause notice. But, instead of complying with the said direction, the respondents directly approached the Settlement Commission at Chennai, the 14th respondent herein, by filing an application under Section 127-B of the Customs Act for settling the case and for immunity from fine, penalty, payment of interest and prosecution. The appellant herein filed his counter and prayed for dismissal of the application, inter alia, contending that the respondents, instead of complying with the directions given by this Court in W.P. No.6157 of 2003, have approached the Settlement Commission to scuttle the process of law. The various factual averments made by the respondents were specifically denied by the appellant herein. It was specifically stated that the application itself was inadmissible.

3. Pending the proceedings before the 14th respondent, an interim application was filed by respondents 1 to 13 for transfer of the proceedings to the 15th respondent. This was resisted by the appellant on the following grounds :

(1) The place of occurrence of the offence is the factory of the applicant located in the present jurisdiction of Pondicherry Commissionerate and hence, it would be natural, logical, legal and more appropriate for the Chennai Bench to deal with the application.

(2) If the applications are to be dealt with by the Chennai Bench of the Settlement Commission, the officers would be able to render more assistance easily.

(3) The documents seized/obtained relating to the case are voluminous and available in the Office of the Respondent Commissioner. These are vital for the quantification of liability, and transporting them to Mumbai may jeopardize the interest of Revenue, apart from involving substantial expenditure.

(4) Majority of the applicants, i.e., the recipients of 8 of the original 13 notices are working in the main applicant's factory at Sattammai Village and reside nearby. Hence, it would be easier for them also to pursue the case at Additional Bench, Chennai rather than at Mumbai.

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It was also submitted by the appellant that most of the parties concerned are in Tamil Nadu and two more persons, who have since resigned from the main company's services, are also in Tamil Nadu; and that the investigation was spread over Tamil Nadu, Gujarat and Maharashtra, with the main applicant-Company being situated in Tamil Nadu. The transfer was specifically objected to on the ground that it would not be convenient for the Revenue to pursue the proceedings before the 15th respondent.

4. After considering the relevant facts, the 14th respondent rejected application for transfer. Thereafter, the respondents moved the 16th respondent for transfer of the applications to the 15th respondent. Before the 16th respondent, it was contended that the 14th respondent ought not to have rejected the application for transfer, since the powers of transfer as vested only with the Chairman of the Settlement Commission, namely the 16th respondent and that the 14th respondent ought to have forwarded the request to the 16th respondent and not rejected it itself. The 16th respondent, after considering the written and oral submissions, observed, "While there can be no doubt that the power to hear and settle the application rests with the Additional Bench at Chennai, it is true and also that it will be very difficult for the Revenue to present their case at Mumbai since it will involve expenditure in transport of documents and also travel of the officers concerned." But, what persuaded the 16th respondent to order the transfer was that while rejecting the request for transfer, the 14th respondent had not confined itself to considering the request for transfer alone, but had also, inter alia, made observations to the effect that the admitted duty liability is a pittance compared to the amount mentioned in the show cause notice. Therefore, to dispel the apprehension in the minds of the applicants that they will not receive a fair hearing and in the interest of justice and fair play, the request for transfer was acceded to. Thereafter, the 15th respondent considered the admissibility of the application filed by the respondents and held that the respondents fulfilled all the conditions to be satisfied under Section 127-B of the Customs Act. It is this order that was challenged in the writ petition.

5. The only ground on which the learned single Judge refused to entertain the writ petition was that since the earlier order of transfer passed by the 16th respondent was not challenged, it was not open to the Revenue to now file the present writ petition before this Court.

6. Mr. K. Veeraraghavan, learned Senior Central Government Standing Counsel appearing for the appellant would submit that merely because the order of transfer passed by the 16th respondent was not challenged, it will not deprive the appellant of its right to approach this Court for the relief sought for, since almost the entire cause of action has fallen within the jurisdiction of this Court. It was submitted that the appellant is now aggrieved by the order of the 15th respondent admitting the case of respondents 1 to 13. It is the specific grievance of the

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appellant that the 15th respondent ought to have rejected the application filed by respondents 1 to 13 in limine and ought not have admitted the case at all. In support of his contentions regarding jurisdiction, learned Senior Central Government Standing Counsel relied on the judgment of the Supreme Court in Musaraf Hossain Khan vs. Bhagheeratha Engineering Ltd. [J.T. 2006 (3) S.C. 80] and a judgment of a Division Bench of the Madurai Bench of the Madras High Court in Ex. Rect. A. Madurai Veeran (M.P.) vs. Union of India [2006 (1) C.T.C. 732].

7. Learned counsel appearing for the respondents would submit that having acquiesced to the earlier order of transfer of the proceedings from the 14th respondent to the 15th respondent, the appellant is bound to challenge the impugned order only before the Bombay High Court and not before this Court and the order of the learned single Judge did not deserve interference.

8. The territorial jurisdiction of a High Court exercising its power under Article 226 of the Constitution of India is determined by Article 226(2). Article 226(2) of the Constitution reads thus :

> "(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

Therefore, the fact that the 15th respondent has passed the impugned order will not take away the right of this Court to entertain the writ petition if the cause of action, either wholly or in part, has arisen within the territories in relation to which this Court exercises its jurisdiction. The order passed by the 16th respondent also makes it abundantly clear that almost the entire cause of action had arisen only within the jurisdiction of the Additional Bench of the Settlement Commission at Chennai, viz. the 14th respondent herein and the only reason why the 16th respondent transferred the case was that the respondents expressed an apprehension that in view of certain observations made by the 14th respondent while rejecting their request for transfer, their application under Section 127-B would not get a fair hearing.

9. It has been the contention of the appellant all along that the application under Section 127-B was not maintainable. The 15th respondent held otherwise and the appellant is aggrieved. It is open to them to challenge the said order in whichever Court within whose jurisdiction part of the cause of action had arisen. In the present case, we have already seen that respondents 2, 5, 6, 7, 8, 11, 12 and 13 either carry on business or reside within the territories subject to the jurisdiction of this Court. The show cause notice dated 24.9.2002, which forms the genesis of these proceedings, was also issued at Chennai. The documents

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which were seized which relate to this case and which are required for establishing the case of the Revenue are all with the office of the appellant. There is no gainsaying the position that this Court has the jurisdiction to entertain the writ petition, since almost the entire cause of action has arisen here.

10. The question of 'cause of action' came up for consideration in Kusum Ingots & Alloys Ltd. vs. Union of India [2004 (168) E.L.T. 3 (S.C.)] and the Supreme Court held as follows :

> "Keeping in view the expressions used in Clause (2) of Article 226 of the Constitution of India, indisputably, even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter.
>
> .....
>
> This Court in Oil & Natural Gas Commission vs. Utpal Kumar Basu & Ors. [(1994) 4 SCC 711], held that the question as to whether the court has a territorial jurisdiction to entertain a writ petition, must be arrived at on the basis of averments made in the petition, the truth or otherwise thereof being immaterial.
>
> When an order, however, is passed by a Court or Tribunal or an executive authority whether under provisions of a statute or otherwise, a part of cause of action arises at that place. Even in a given case, when the original authority is constituted at one place and the appellate authority is constituted at another, a writ petition would be maintainable at both the places. In other words, as order of the appellate authority constitutes a part of cause of action, a writ petition would be maintainable in the High Court within whose jurisdiction it is situate having regard to the fact that the order of the appellate authority is also required to be set aside and as the order of the original authority merges with that of the appellate authority."

11. In the same judgment, the Supreme Court held that the fact that a small part of the cause of action arose within the territorial jurisdiction of a High Court will by itself may not be the determinative factor compelling the High Court to decide the matter and that "in appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens". In the present case, for the reasons set out above, there can be no doubt that the Madras High Court is the 'forum conveniens' as far as this dispute is concerned.

12. In 2006 (1) C.T.C. (supra), which also dealt with this issue, a Division Bench of this Court held as follows :

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"Thus, the power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which 'the cause of action, wholly or in part, arises' and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The amendment is thus aimed at widening the width of the area for reaching the writs issued by different High Courts."

In the present case, the appellant has alleged that the entire occurrence of the offence was committed within the jurisdiction of the Settlement Commission, Additional Bench, Chennai and out of 13 applicants, 8 applicants are working in the fifth respondent's factory at Sathammai Village, within the jurisdiction of the Settlement Commission, Chennai and the show cause notice, which was the basis for filing the application, was also issued at Chennai. The private bonded warehouse, from where the respondents are alleged to have acquired the raw materials without payment of duty, is also located at Maduranthagam. The surprise investigation, the recovery of incriminating documents and records have also taken place within the jurisdiction of this Court. All the other events spelt out in Annexure-A, which form the grounds to the allegations contained in the show cause notice, would show that they took place within the jurisdiction of this Court.

13. Recently, in J.T. 2006 (3) S.C. 80 (supra), the question whether the Kerala High Court had jurisdiction to entertain the writ petition came up for consideration. In that case, the Supreme Court held as follows :

"In Union of India & Others vs. Adani Exports Ltd. & Another [(J.T. 2001 (9) S.C. 318], this Court observed :

It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts to constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case do not give rise to a cause of action so as to consider territorial jurisdiction on the court concerned."

In this case, the facts which decidedly have a bearing with the lis and which gave rise to a cause of action arose here.

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14. For all these reasons, we are satisfied that the appellants were entitled to file a writ petition in this Court. The learned single Judge had not dealt with the matter on merits and had dismissed the writ petition only on the preliminary issue of jurisdiction. The order of the learned single Judge is, therefore, set aside and the matter is sent back to the learned single Judge to be dealt with in accordance with law. The writ appeal is accordingly allowed with no order as to costs. Consequently, W.A.M.P. No.676 of 2006 is closed.

ab

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To

1. Customs & Central Excise,
   Settlement Commission,
   Additional Bench, Narmadha Block,
   Custom House, 33, Rajaji Salai,
   Chennai-1.

2. The Settlement Commissioner,
   Customs & Central Excise,
   Utpad Shulk Bhavan,
   6th Floor, Bandra-Kurla Complex,
   Bandra (East), Mumbai-400 051.

3. The Chairman,
   The Settlement Commission,
   Customs & Central Excise,
   Principal Bench, New Delhi.

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+ 1 CC To Mr.K.Veera Ragahavan,SCCG, SR NO.20408.
+ 1 CC To Mr.A.Ramesh Kumar, Advocate, SR NO.19812.

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MF(CO)
RVL 25.04.2006

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